STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

February 17, 2006

Mr. Robert S. LaBrant
Michigan Chamber of Commerce
600 South Walnut Street
Lansing, Michigan 48933-2200

Dear Mr. LaBrant:

In correspondence dated November 15, 2005, you submitted a request to the Department of State (Department), asking it to issue a declaratory ruling or interpretive statement pursuant to the Michigan Campaign Finance Act (MCFA or Act), MCL §169.201 *et seq*., regarding the ability of a public body to make expenditures for the benefit of a labor organization's separate segregated fund.

Subsequently, the Department received written commentary from Ms. Kathleen Corkin Boyle, dated December 6, 2005, and Mr. Andrew Nickelhoff, dated December 9, 2005, suggesting that you are not entitled to receive a declaratory ruling or interpretive statement on this subject. After careful consideration of the arguments advanced by Ms. Corkin Boyle and Mr. Nickelhoff, the Department is satisfied that it is appropriate to issue the following interpretive statement as an informational response to your inquiry.

Ms. Corkin Boyle and Mr. Nickelhoff assert that only an "interested person" may submit a request for a declaratory ruling under the Act, and that you do not qualify as an "interested person" for purposes of your request. The Department agrees that you are not entitled to receive a declaratory ruling and denies that portion of your request, as your correspondence did not include a "reasonably complete statement of facts." *MCL §169.215(2)*. A 2001 amendment to the Act[1] requires the Department to issue an interpretive statement if it refuses to issue a declaratory ruling. The 2001 legislation was designed to compel the Department to publish an interpretive statement "providing an informational response to the question presented" as a substitute for a declaratory ruling. *Id*. Accordingly, the Department offers the following as an interpretive statement in response to your request.

The second question presented in your letter reads:

*Please confirm that MCL §169.257 does not contain any exceptions nor is there any other express statutory authority to permit reimbursement from a labor organization to a public body*

[1] 2001 Public Act 250, Eff. March 22, 2002.

*for expenses relating to the institution of a payroll deduction plan for the collection of contributions to a labor organization's separate segregated fund.*

In 1994, the Attorney General opined that public schools and universities are prohibited from making expenditures for "the establishment, administration, and solicitation of contributions to a separate segregated fund". *OAG, 1993-1994, No. 6785, p. 102, 104.* A subsequent Attorney General opinion, issued on February 16, 2006, provided that a public body is prohibited from administering a payroll deduction plan for the collection of contributions to a labor organization's separate segregated fund, as such activity constitutes an expenditure within the meaning of MCL §169.257. *OAG, 2005-2006, No. 7187, p. __.* That provision prohibits a public body or an individual acting on its behalf from using or sanctioning the use of "funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure." *MCL §169.257(1).* While the Act specifically allows a corporation to establish a separate segregated fund and make expenditures for the fund's operation, no corresponding authorization exists in current law for a public body's sponsorship and administration of a separate segregated fund. *Cf. MCL §§169.255(1)-(3), 169.257.* Moreover, a public body – unlike a corporation or labor organization – is not permitted by the MCFA to implement a payroll deduction plan for the automated collection of contributions to a separate segregated fund. *Cf. MCL §§169.255(6), 169.257.*

In 1998, the Department determined that a university is precluded by MCL §169.257 from collecting and remitting contributions to a ballot question committee, as this activity constitutes an expenditure under the Act. *See Interpretive Statement issued to David Cahill (August 4, 1998).* Further, the Department indicated that "the underlying prohibition in section 57 cannot be avoided by permitting [a student assembly] to reimburse the University for activities, which are themselves prohibited by section 57, without express statutory authority." *Id.* The Attorney General has also determined in his February 16, 2006 opinion that "[a] labor union's offer to reimburse the State for the expenses involved in administering a payroll deduction plan to facilitate employee contributions to a political action committee would neither obviate the violation nor permit the implementation of an otherwise prohibited plan." *OAG, 2005-2006, No. 7187, p. __.* For these reasons, the Department concludes that the utilization of public resources for the establishment and maintenance of a payroll deduction plan on behalf of a labor organization's separate segregated fund constitutes a prohibited expenditure under the MCFA, which cannot be expunged by a labor organization's reimbursement of the public body's actual costs.

Considering this result, the Department's position on the first question you pose – whether the costs associated with specific items constitute expenditures under the MCFA – is immaterial. The Department notes, however, that the Act specifically identifies those public resources that must not be employed for purposes of making contributions or expenditures. These include "funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources." *MCL §169.257(1).* Moreover, the Department recently indicated in an Interpretive Statement issued to Robert LaBrant, dated

November 14, 2005, that "the Department interprets the term 'expenditure' to include the costs associated with collecting and delivering contributions to a committee."[2]

**Conclusion**

In the issuance of this interpretive statement, the Department emphasizes that public bodies differ in significant respects from corporations, and the law appropriately distinguishes between these entities.

First, the statutory scheme that prohibits a public body from participating in political campaigns is broader than §57 of the MCFA. For example, the Political Activities by Public Employees Act, MCL §15.401 *et seq*., precludes an employee of the state or local unit of government from engaging in political affairs during work hours. The Michigan Gaming Control and Revenue Act, MCL §432.201 et seq., prohibits members, employees and agents of the Michigan Gaming Control Board from engaging in political activity for the duration of their employment. *MCL §432.204d(14)*. State Civil Service Rule 1-12 generally prohibits a state employee from partaking in political activities during work hours, and specifically precludes the solicitation of campaign contributions from civil servants. *Civil Service R 1-12.5*. Civil Service Rules further provide that prohibited subjects of collective bargaining include the political activities of state civil service employees. *Civil Service R 6-3.2(b)(6)*. Executive Order 2003-2 prohibits the solicitation or receipt of campaign contributions at certain state government facilities. The federal Hatch Act, 5 USC §1501 *et seq*., which applies to certain employees of the state and local units of government whose employment relates to a federally-funded program, prohibits a covered employee from becoming a candidate for a partisan public office, using official authority to influence the results of an election or nomination, or coercing subordinates to make contributions to a political party or candidate. These laws, taken together, promote a strong public policy that forbids government involvement in partisan campaign activities.

In addition, administrative policies implemented by the state of Michigan confirm the importance of government neutrality in political campaigns. The Department of Management and Budget's Administrative Guide to State Government contains Procedure 1220.05, which provides, "[t]he State should not act as or have the appearance of sanctioning any form of political activity by becoming an intermediary or agency by virtue of payroll deduction."[3] Canon 7 of the Michigan Code of Judicial Conduct strictly regulates the political conduct of judges and candidates for judicial office, including the solicitation of campaign contributions. Section 4 of the Model Code of Conduct for Court Employees[4] prohibits employees of the judiciary from engaging in political activities in the workplace. These policies defend the public's interest in sequestering political campaigning from the administration of government.

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[2] The Department notes that an expenditure may also be considered an in-kind contribution on the part of the recipient committee. *MCL §169.209(3)*. Assuming, *arguendo*, that the MCFA were interpreted to permit a public body's expenditure of government resources for the operation of a payroll deduction plan for the benefit of a separate segregated fund, the fund would be required to report this activity as an in-kind contribution.

[3] http://www.michigan.gov/dmb/0,1607,7-150-9131_9347-29994--,00.html

[4] http://courts.michigan.gov/mji/resources/code-conduct.pdf

It is imperative to maintain strict government neutrality in elections in order to protect the integrity of the democratic process. State and local units of government, and their elected officials and employees, share a heightened duty to safeguard public resources from misuse for political purposes. The MCFA is only one part of the state's comprehensive statutory scheme that prohibits a public body from participating in political campaigns. A public body that administers a payroll deduction plan on behalf of a separate segregated fund violates the Act and runs afoul of this sound public policy.

As noted above, your correspondence did not include a statement of facts sufficient to form the basis of a declaratory ruling. Accordingly, the Department offers the foregoing informational response as an interpretive statement.

Sincerely,

Brian DeBano
Chief of Staff / Chief Operating Officer